

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

R. ALEXANDER ACOSTA,)
Secretary of Labor,)
United States Department of Labor,)

Plaintiff,)

v.)

MICHIGAN DEPARTMENT OF)
HEALTH AND HUMAN SERVICES,)
and **KALAMAZOO PSYCHIATRIC**)
HOSPITAL,)

Defendants.)

Civil action no.: 1:16-cv-01368

Judge Paul L. Maloney

AGREED ORDER OF SETTLEMENT

Plaintiff, **R. ALEXANDER ACOSTA**, Secretary of Labor, United States Department of Labor, and Defendants, **MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES** and **KALAMAZOO PSYCHIATRIC HOSPITAL**, represent to the Court an agreement has been reached upon the outstanding matters pending in the above-captioned matter.¹ The parties stipulate to the entry of this Agreed Order, and, as agreed by the parties, the Court finds it has jurisdiction to enter this Order.

It is hereby **ORDERED** that:

Pursuant to section 107(b)(3) of the Family and Medical Leave Act of 1993, 29 U.S.C.

¹ Per the Court's *Order* (ECF No. 64), Defendants are also paying pay the full amount of back wages and an equal amount of liquidated damages, totaling \$30,513.64. This payment, less withholdings, will be made at the same time Defendants pay the front pay due Mr. Cavinder, as discussed herein.

§ 2601 *et seq.*, (“FMLA” or “the Act”), Defendants shall pay to the Plaintiff the sum of \$23,125.44, which represents the amount of front pay owed to Danny Cavinder in lieu of Mr. Cavinder’s promotion to the ADON position.

The monetary provisions of this Agreed Order shall be deemed satisfied upon Defendants’ delivery to the Plaintiff’s representative of the following:

(a) A schedule, in duplicate, showing the name, last-known address, social security number, gross amount of front pay due, any deductions or taxes related to those amounts, and the total net amount of front pay due Mr. Cavinder.

(b) A warrant issued to Plaintiff’s representative, payable to “Danny Cavinder” for the full amount of front pay referenced herein.

(c) All withholdings shall be paid by Defendants to the appropriate State, Federal, and city revenue authorities as applicable. Defendants remain responsible for paying their share of any applicable taxes to the appropriate state, Federal, and city revenue authorities as applicable.

(d) Within 45 days of the entry of this order, the warrant discussed in this Agreed Order shall be delivered to: Catherine L. Seidelman, Office of the Solicitor, U.S. Department of Labor, 230 South Dearborn Street, Suite 844, Chicago, IL 60604.

(e) Plaintiff shall distribute the warrant to Danny Cavinder, or to his estate, if that be necessary, and any amount not so paid within a period of three (3) years from the date of receipt thereof shall, pursuant to section 107(b)(3), be deposited into the Treasury of the United States as miscellaneous receipts.

To promote compliance with the provisions of the FMLA, Defendants agree to implement the following:

- a) Within six months of the date of this Agreed Order, all of Defendant Kalamazoo Psychiatric Hospital's Human Resources Managers and Assistants, Department Heads, and Supervisors will receive, at Defendants' expense, FMLA training by a competent and qualified trainer. A competent qualified trainer shall include DHHS Human Resource personnel who are knowledgeable about the FMLA.
- b) Within two pay periods of the date of this Agreed Order, a copy of US DOL Wage Hour Division Fact Sheet ("FS") 77B shall be given to each current employee of Kalamazoo Psychiatric Hospital. FS 77B is publicly available at the following web address: <https://www.dol.gov/whd/regs/compliance/whdfs77b.pdf>.
- c) Defendants represent they neither currently have nor will create any employment files for Mr. Cavinder that reference this action or the circumstances leading up to this action.
- d) If Mr. Cavinder ever ceases working for Defendants and Defendants are contacted for a job reference, Defendants will provide a neutral reference, consistent with Defendants' practice, and will not mention this action or the circumstances leading up to this action in their response to that job reference. Any reference requests must be directed to MI HR at (517) 284-6460.

FURTHER, it is agreed by the parties herein and hereby **ORDERED** that each party bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding to date.

It is **ORDERED** that the trial in the above-captioned matter be cancelled.

SO ORDERED.

DATED this _____ day of _____ 2018.

District Court Judge Paul L. Maloney

**MICHIGAN DEPARTMENT OF
HEALTH AND HUMAN SERVICES**

/s/ Carrie Waggoner, J.D.
Carrie Waggoner, J.D.
Acting Director
Bureau of Legal Affairs

**KALAMAZOO PSYCHIATRIC
HOSPITAL**

/s/ George E. Mellos, M.D.
George E. Mellos, M.D.
Sr. Executive Psychiatrist Director
**Bureau of State Hospital and Behavioral
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U.S. DEPARTMENT OF LABOR

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